

DRAFT
REGULATIONS GOVERNING JUVENILE RECORD INFORMATION
AND THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM
(Revised 5 20 2002)

Part I.
General Provisions.

6 VAC 35-160-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Access" means the ability directly to obtain information concerning an individual juvenile contained in manual or automated files.

"Department" means the Department of Juvenile Justice.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Dissemination" means any transfer of juvenile record information, whether orally, in writing, or by electronic means to any person other than an employee of a participating agency who has both a need and a right to know the information.

"Expunge" means to destroy all records concerning an individual juvenile, or all identifying information related to an individual juvenile that is included in aggregated files and databases, in accordance with a court order.

"Juvenile record information" means any information in the possession of a participating agency pertaining to the case of a juvenile who is or has been the subject of a petition as provided by Code of Virginia § 16.1-260, as well as to identifying information concerning such a juvenile in any database or other aggregated compilation of records. The term does not apply to statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

"Participating agency" means the Department of Juvenile Justice or any court service unit, detention home, group home or emergency shelter; or any public agency, child welfare agency, private organization, facility or person who is treating or providing services to a child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ [16.1-309.2](#) et seq.) of Chapter 11 of title 16.1 of the Code of Virginia, that is approved by the Department to have direct access to juvenile record information through the Virginia Juvenile Justice Information System or any of its component or derivative information systems. The term "participating agency" does not include any court.

"Virginia Juvenile Justice Information System (VJJIS)" means the equipment, facilities, agreements and procedures used to collect, process, preserve or disseminate juvenile record information in accordance with Code of Virginia §§ 16.1-224 or 16.1-300. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"VJJIS administrator" means the Department of Juvenile Justice employee who is responsible for overseeing the overall operation of the Virginia Juvenile Justice Information System.

6 VAC 35-160-20. Applicability of these standards.

These regulations apply to information, data and records maintained on or derived from the Virginia Juvenile Information System, including originals and copies of manual or automated juvenile record information.

Part II
Participating Agencies in the
Virginia Juvenile Justice Information System

6 VAC 35-160-30. Designation as a participating agency.

- A. State-operated and locally-operated court services units, and detention homes and boot camps as defined in Code of Virginia § 16.1-228 shall be participating agencies in the Virginia Juvenile Justice Information System.
- B. Any other agency that is eligible to receive juvenile record information under Code of Virginia Section 16.1-300 may apply for status as a participating agency.

6 VAC 35-160-40. Signed agreement required.

The Department shall develop a written agreement with each participating agency delineating the participating agency's access to and responsibility for information contained in the Virginia Juvenile Justice Information System.

VAC 35-160-50. Data submissions.

- A. All participating agencies shall submit data and other information as required by Department policy to ensure that juvenile record information is complete, accurate, current and consistent.
- B. Administrators of participating agencies are responsible for ensuring that entries into the juvenile justice information system are accurate, timely, and in a form prescribed by the Department.

C. All information entered into the Virginia Juvenile Justice Information System shall become part of a juvenile's record and shall be subject to the confidentiality provisions of Section 16.1-300 of the Code of Virginia.

6 VAC 35-160-60. Access provided to participating agencies.

- A. In accordance with policies governing confidentiality of information and system security, the Department may limit or expand the scope of access granted to participating agencies.
- B. When individuals or participating agencies are providing treatment or rehabilitative services to a juvenile as part of an agreement with the Department, their access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service.
- C. An individual's juvenile record information shall be made available only to participating agencies currently supervising or providing services to the juvenile, and only upon presentation of the unique identifying number assigned to the juvenile.

6 VAC 35-160-70. Designation of authorized individuals.

- A. Each participating agency shall determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities.
- B. In accordance with applicable law and regulations, the Department may require a background check of any individual who will be given access to the VJJIS system through any participating agency. The Department may deny access to any person based on the results of such background investigation or due to the person's violation of the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of juvenile record information.
- C. Only authorized employees shall have direct access to juvenile record information.
- D. Use of juvenile record information by an unauthorized employee, or for a purpose or activity other than one for which the person is authorized to receive juvenile record information, will be considered an unauthorized dissemination.
- E. Persons who are given access to juvenile record information shall be required to sign an agreement stating that they will use and disseminate the information only in compliance with law and these regulations, and that they understand that there are criminal and civil penalties for unauthorized dissemination.

6 VAC 35-160-80. Administrator to ensure compliance with regulations.

The administrator of each participating agency shall ensure that employees who have access to juvenile record information are made familiar with the substance of this

regulation and are briefed on their responsibility to protect the confidentiality of juvenile record information. The administrator of each participating agency is also responsible for reviewing all procedures connected with security of juvenile record information to ensure their relevance and continuing effectiveness.

6 VAC 35-160-90. Security of physical records.

- A. A participating agency that possesses physical records or files containing juvenile record information shall institute procedures to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind or other natural or man-made disasters.
- B. Only authorized persons who are clearly identified shall have access to areas where juvenile record information is collected, stored, processed or disseminated. Locks, guards or other appropriate means shall be used to control access.

6 VAC 35-160-100. Requirements when records are automated.

Participating agencies having automated juvenile record information files shall:

- 1. designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures;
- 2. maintain "backup" copies of juvenile record information, preferably off-site.
- 3. develop a disaster recovery plan, which shall be available for inspection and review by the department;
- 4. carefully control system specifications and documentation to prevent unauthorized access and dissemination.

6 VAC 35-160-110. Operational programs for computer security.

- A. Where juvenile record information is computerized, operational programs will ensure that records can be queried, updated or destroyed only from approved terminals.
- B. The operational programs described in paragraph A shall be known only to the employees of the participating agency who are responsible for control of the juvenile record information system or to individuals and agencies operating under a specific agreement with the participating agency to provide such security programs. The program(s) shall be kept under maximum security conditions.
- C. Computer operations, whether dedicated or shared, that support juvenile record information shall operate in accordance with procedures developed or approved by the Department.
- D. Juvenile record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by terminals outside of the participating agencies.

6 VAC 35-160-120. Procedures to protect security of juvenile record information.

Participating agencies shall establish procedures to detect unauthorized access or attempted access of juvenile record information, either physically or electronically, as well as procedures to be followed when an attempt or unauthorized access is detected. Such procedures shall be part of the orientation of employees working in any office, room, space or area in which juvenile record information is regularly collected, processed, stored, or disseminated.

6 VAC 35-160-130. Security of telecommunications.

- A. Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the Department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons.
- B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be attended during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information.
- C. Telecommunications facilities used in connection with the remote access device shall also be secured. The remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the remote access device operator shall be required. Equipment associated with the remote access device shall be reasonably protected from possible tampering or tapping.

6 VAC 35-160-140. Timelines for data submission.

The Virginia Juvenile Justice Information System makes it possible to record most juvenile record information instantaneously. All transactions that are not entered immediately into the juvenile justice information system through on-line submission shall be entered within 24 hours, except as follows:

- 1. Disposition. Notice of the court's final action on a case shall be recorded on the juvenile justice information system no more than 10 days from the date the order is entered by the presiding judge; and
- 2. Appeals. In the case of an appeal, the court's action on the appeal shall be recorded within 10 days after final action of the case; and
- 3. Release from direct care. Designated Department personnel shall record notice of a ward's release within 24 hours of the release.

6 VAC 35-160-150. Correcting errors.

Participating agencies shall immediately notify the juvenile justice information system administrator when it is found that incorrect information has been entered into the juvenile justice information system. The administrator will make arrangements to correct the information as soon as practicable in accordance with Department procedures.

Part III.

Responding to requests for juvenile record information

6 VAC 35-160-160. Existence of records shall not be confirmed or denied.

No participating agency or individual shall confirm or deny the existence or nonexistence of juvenile record information to persons or agencies that would not be eligible to receive the information pursuant to Code of Virginia § 16.1-300.

6 VAC 35-160-170. Information to be disseminated only in accordance with law and regulation.

- A. In accordance with Code of Virginia § 16.1-223, data stored in the Virginia Juvenile Justice Information System shall be confidential, and information from such data that may be used to identify a juvenile may be released only in accordance with § 16.1-300 and this regulation.
- B. Unauthorized dissemination of juvenile record information will result in the disseminator's being subject to the administrative sanctions described in 6 VAC 35-160-380. Unlawful dissemination is also a Class 3 misdemeanor (see § 16.1-309 of the Code of Virginia).

6 VAC 35-160-180. Fees.

Participating agencies may charge a reasonable fee for search and copying time expended when an individual or a non-participating agency requests juvenile record information. The participating agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

6 VAC 35-160-190. Requesting juvenile record information.

Individuals or non-participating agencies requesting juvenile record information must submit a written request for each record or part thereof to which they request access. This may be done in person, by mail, or by electronic means.

6 VAC 35-160-200. Verifying requestor's identity.

A person requesting juvenile record information shall be required to present proper evidence of his or her own identity, the identity of the individual whose juvenile record information is requested, and authorization from the individual, the individual's attorney,

or, if the individual is a juvenile, the individual's parent, guardian or other person standing in loco parentis.

6 VAC 35-160-210. Determining requestor's eligibility to receive the information.

- A. Upon receipt of a request for juvenile record information, the person responding to the request shall determine whether the requesting agency or individual is eligible to receive juvenile record information as provided in § 16.1-300 of the Code of Virginia and this regulation.
- B. For purposes of this regulation, a person, agency or institution shall be deemed to have a "legitimate interest" in a juvenile's case under Code of Virginia § 16.1-300 A.(7) when (i) the requestor is providing treatment or rehabilitative services that is related to allegations contained in a delinquency petition concerning the juvenile, or (ii) the requestor has custody of or is providing supervision for a juvenile and the information is requested in the interest of maintaining security in a secure facility.

6 VAC 35-160-220. Responding to requests.

- A. Once it is determined that a requestor is entitled to juvenile record information, the person responding to the request shall inform the requestor of the procedures for reviewing the juvenile record information, including the general restrictions on the use of the data, when the record will be available, and any costs that may be involved.
- B. When the request for juvenile record information is made by an individual's parent, guardian, legal custodian or other person standing in loco parentis, the request shall be referred to designated personnel of the Department. (See 6 VAC 35-160-230.)
- C. Before beginning the search for the requested juvenile record information, the person responding to the request shall obtain the consent of the requester to pay any charges associated with the dissemination.
- D. Except as provided in paragraph B, requested records shall be provided as soon as practicable, but in any case within seven days. If the participating agency does not have access to the entire juvenile record maintained on the VJJIS, the requestor shall be so notified and shall be told how to request access to the entire record.
- E. Personnel of the participating agency shall provide reasonable assistance to the individual or his attorney to help understand the record.
- F. The person releasing the record shall also inform the individual of his right to challenge the record.
- G. If no record can be found, a statement shall be furnished to this effect.

6 VAC 35-160-230. Certain information may be withheld from release.

Code of Virginia § 16.1-300.B. provides that any portion of a juvenile's record may be withheld from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court of the jurisdiction in which the juvenile currently resides shall concur in such determination. If the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information about the child's progress as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court of the jurisdiction where the child currently resides shall have jurisdiction over petitions filed by a parent, guardian, legal custodian or other person standing in loco parentis for review of the Department's decision to withhold reports or records as provided herein.

6 VAC 35-160-240. Notice to accompany disseminated juvenile record information.

The following printed message shall accompany all juvenile record information disseminated outside the Virginia Juvenile Justice Information System:
"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

6 VAC 35-160-250. Maintaining a dissemination log.

Each participating agency shall maintain a record, either automated or manual, of any dissemination for a period of at least three years from the date of the dissemination. The dissemination log must list all requests for juvenile record information and shall include the following information on each dissemination:

- a. Date of inquiry;
- b. The name and address of the individual or agency making the request;
- c. If an agency request, the name and position of the individual making the request;
- d. Whether the request was referred to the Department (See 6 VAC 35-160-220.B); and
- e. Name of the person responding to the request.

6 VAC 35-160-260. Reporting unauthorized disseminations.

- A. Participating agencies shall notify the department when they observe any violations of the above dissemination regulations. The department will investigate and respond to the violation as provided in law and these regulations.
- B. A participating agency that knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

6 VAC 35-160-270. Interstate dissemination.

Interstate dissemination of juvenile record information shall be subject to this regulation. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and this chapter, as if the agency were within the jurisdiction of the Commonwealth.

PART IV

Challenge to and Correction of Juvenile Record Information

6 VAC 35-160-280. Challenge.

- A. Individuals, or persons acting on an individual's behalf as provided for by law, may challenge their own juvenile record information by completing documentation provided by the Department and forwarding it to the Virginia Juvenile Justice Information System or the participating agency that originated the record information.
- B. The individual may keep a duplicate copy of the form and the challenged record.
- C. When a record that is maintained by the VJJIS is challenged, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity to make a brief statement describing how the information contained in the record is alleged to be inaccurate. When a challenged record is disseminated while under challenge, the record shall carry both the flagged message and the individual's statement, if one has been provided.
- D. The VJJIS administrator or designee shall examine the individual's record to determine if a data entry error was made. If a data entry error is not obvious, the VJJIS administrator shall send a copy of the challenge form and any relevant information to all agencies that could have originated the information under challenge, and shall ask them to examine their files to determine the validity of the challenge.
- E. The participating agencies shall examine their source data, the contents of the challenge, and information supplied by the VJJIS for any discrepancies or errors, and shall advise the VJJIS administrator of the results of the examination.
- F. If a modification of a VJJIS record is required, the VJJIS administrator shall make the required change and shall notify all participating agencies that were asked to examine their records in connection with the challenge.
- G. The VJJIS administrator shall also send notification of the correction to all recipients of the record within the last 24 months.
- H. Participating agencies that have disseminated an erroneous or incomplete record shall in turn notify all entities that have received the erroneous juvenile record information, as recorded on the agency's dissemination log.

- I. The participating agency that received the challenge shall notify the individual or person acting on the individual's behalf of the results of the challenge and the right to request an administrative review and appeal those results.

6 VAC 35-160-290. Administrative review of challenge results.

- A. If not satisfied with the results of the challenge, the individual or those acting on his behalf may, within 30 days, request in writing an administrative review of the challenge by the Director of the Department of Juvenile Justice.
- B. Within 30 days of receiving the written request for the administrative review, the Director of the Department of Juvenile Justice, or a designee who is not the VJJIS system administrator, shall review the challenge, the findings of the review and the action taken by the VJJIS administrator. If the administrative review supports correction of the juvenile record information, the correction shall be made as prescribed above. In any event, the Director or designee shall give the individual or those acting on his behalf written notice of the decision and of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision.

6 VAC 35-160-300. Removal of a challenge designation.

When juvenile record information is determined to be correct, either as a result of a challenge or an administrative review of the challenge, the VJJIS administrator shall notify the affected participating agencies to remove the challenge designation from their files.

PART V.
Expungement.

6 VAC 35-160-310. Expungement requirements.

When a court orders the expungement of an individual's juvenile records, all records and identifying information associated with such person shall be destroyed. Non-identifying information may be kept in databases or other aggregated files for statistical purposes.

6 VAC 35-160-320. Notification to participating agencies.

The VJJIS administrator shall notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged. The notification shall include a copy of the applicable court order, along with notice of the penalties imposed by law for disclosure of such identifying information (see Code of Virginia Section 16.1-309).

6 VAC 35-160-330. Procedures for expunging juvenile record information.

- A. Paper versions of records that have been ordered expunged shall be destroyed by shredding, incinerating, pulping or otherwise totally eradicating the record.
- B. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of any equipment or software that is part of the Virginia Juvenile Justice Information System.
- C. If identifying information concerning the subject individual is included in records that are not ordered expunged, the identifying information relating to the individual whose records have been ordered expunged shall be obliterated on the original or a new document shall be created eliminating the identifying references to the individual whose record has been ordered expunged.

6 VAC 35-160-340. Confirmation notice required to VJJIS administrator.

Within 30 days of receiving expungement instructions from the VJJIS administrator, the participating agency shall expunge the juvenile record information in accordance with 6 VAC 35-160-330 and shall notify the VJJIS administrator when the records have been expunged. The notification to the VJJIS administrator shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records were expunged.

6 VAC 35-160-350. Expungement order received directly by participating agency.

When a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order in accordance with 6 VAC 35-160-330 and shall notify the VJJIS administrator of the court-ordered expungement. The VJJIS administrator shall, upon receipt of such notification, obtain a copy of the order from the appropriate court.

Part VI.
Enforcement.

6 VAC 35-160-360. Oversight by the Department of Juvenile Justice.

- A. The Department of Juvenile Justice shall have the responsibility for monitoring compliance with these regulations and for taking enforcement action as provided in these regulations or by law.
- B. The Department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems or procedures established pursuant to this regulation.

6 VAC 35-160-370. Audits authorized and required.

- A. The department shall annually conduct an audit of a random representative sample of participating agencies to ensure and verify adherence to these regulations and to ensure that juvenile record information records are accurate and complete.
- B. The audits may include, but will not be limited to, examination of (i) record accuracy, (ii) completeness of information, (iii) timely submission of information, (iv) controls governing dissemination of information and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely correction of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications to the department as required.
- C. In addition to random audits, the Department may conduct audits at any time for cause, including but not limited to occasions when erroneous record information has been identified through a challenge to any person's juvenile record information.

6 VAC 35-160-380. Administrative sanctions.

In addition to any criminal or civil sanctions to which a violator of these regulations may be subject, the Department may impose administrative sanctions including but not limited to the following:

- a. Temporary or permanent suspension of an individual's authorization to access the Virginia Juvenile Justice Information System;
- b. Temporary or permanent suspension of an entity's designation as a "participating agency";
- c. Temporary or permanent suspension of a participating agency's authorization to access any sub-system of the Virginia Juvenile Justice Information System.